

REPORT - PLANNING COMMISSION MEETING
September 11, 2003

Project Name and Number: SHARPLESS APPEAL (PLN2004-00021)

Applicant: Leonard and Mrs. Sharpless

Proposal: To consider an appeal of a staff determination that room additions are currently prohibited in a specified district

Recommended Action: Deny appeal

Location: 34570 Lang Avenue and other lots easterly of Fremont Boulevard, between Ferry Lane and Darwin Drive, in the Northern Plain Planning Area

Assessor Parcel Number(s): 543-0403-090-00 and others

Area:

34570 Lang Avenue:	1,622-square foot home on 7,367-square foot lot
Other lots:	Homes ranging between 1,276 and 1,640 square feet in floor area on lots 3,825 square feet in area and larger
Total development:	15.1 acres

Owner:

34570 Lang Avenue:	Leonard J. Sharpless
Other lots:	Various

Agent of Applicant: Leonard Sharpless

Consultant(s): None

Environmental Review: Categorically exempt under Section 15301(e) of the *CEQA Guidelines*, relating to existing facilities and minor additions thereto

Existing General Plan: Low-Density Residential, 5 to 7 dwelling units per acre

Existing Zoning: R-1-X-38.25 Single-Family Residence District

Existing Land Use: One-story single-family dwellings, including detached, zero-lot line and patio homes

Public Hearing Notice: Public hearing notification is applicable. A total of 694 notices were mailed to owners and occupants of property within 300 feet of the development on the following streets: Anchor Drive, Armour Way, Bentley Place, Calcutta Drive, Caribbean Common, Chaucer Drive, Darwin Drive, Dryden Road, Ferry Lane, Fremont Boulevard, Gainsborough Terrace, Hurst Avenue, Johnson Court, Lang Avenue, Paseo Padre Parkway, Redgrave Place, Warwick Road and Wells Avenue. The notices to owners and occupants were mailed on August 29, 2003. A Public Hearing Notice was delivered to *The Argus* on August 25, 2003, to be published by September 1, 2003.

Background and Previous Actions: 90 single-family, primarily zero-lot line and patio, homes were approved by the City Council in 1976 on land easterly of Fremont Boulevard between Darwin Drive and Ferry Lane (Morrison Homes, Z-76-3, Tract 3542). The City approved the project design through a seldom-used mechanism, similar to a planned ("P") district or planned unit development (PUD) process, in which architectural plans were included as an exhibit when the site was

rezoned from A Agricultural District. The development was zoned R-1-X-38.25 Single-Family Residence District with a minimum lot size of 3,825 square feet.

Conditions of approval of the rezoning established setbacks for the homes, including a zero setback on one side and the rear. (Condition No. 4) provided

The conditions, covenants and restrictions [CC&Rs] for these units shall contain the restriction that no building additions shall be allowed....

Staff has consistently understood Condition No. 4 above to prohibit additions in all cases.

In 2000, an owner of a conventional detached home on a corner lot in this development applied for a rezoning (from R-1-X-38.25 to R-1-X-38.25 – case PLN2000-00180) to modify Condition No. 4 to allow single-story additions in front and side street yards, subject to zoning administrator approval, for plans with a minimum 5-foot interior side yard setback (non-zero lot line models) located on corner lots. Staff supported the application.

At the hearing before the Planning Commission on February 24, 2000, two neighbors spoke, both in opposition to the proposal. One of the neighbors stated that, in order to modify the CC&Rs for the development and allow the addition to proceed, 70 percent of the owners would have to concur and the change would have to be recorded. No proposal had been made to change the CC&Rs and she did not believe the change would be approved.

Planning Commissioners expressed concern about setting a precedent of reopening neighborhood conditions and expressed reluctance to change the conditions without knowing that the neighborhood supported the change. The Commission (7-0-0-0) denied the rezoning. The applicant did not appeal this decision nor has he reapplied.

Project Description: In June 2003, the owners of another home, Mr. and Mrs. Sharpless, approached staff with a proposed addition and were told that the addition could not be allowed without a rezoning. After corresponding about this matter with the Planning Director, who reiterated staff's inability to approve an addition without the rezoning, Mr. Sharpless filed an appeal of staff's determination. The assertions of the appeal are that neither Condition No. 4 nor the CC&Rs prohibit additions outright.

Project Analysis:

- **General Plan Conformance:** The existing General Plan land use designation for the project site is Low-Density Residential, 5 to 7 dwelling units per acre. Granting this appeal would not be consistent with the General Plan's Housing Goal 1, "Conservation and enhancement of existing residential neighborhoods". Potential impacts on the existing neighborhood are discussed under "[Implications of Granting this Appeal](#)" below.
- **Zoning Regulations:** The Zoning Ordinance provides for R-1-X districts, distinguishing them from other R-1 districts by specifying that the minimum lot area and width and front, side and rear yard requirements "shall be specified for the [particular] R-1-X district" (Zoning Ordinance Section 8-2605). It should be noted that the use of R-1-X districts is no longer common.

As stated above, Condition No. 4 of the rezoning that provided for this development states "the CC&Rs for these units shall contain the restriction that no building additions shall be allowed". Staff has consistently understood that the intent of Condition No. 4 was to prohibit additions.

Grounds of Appeal

According to the appellant and the copy he provided, the CC&Rs actually state

No improvements or additions of any kind ... shall begin without the Owner first obtaining approval of [the homeowners' architectural control committee] and obtaining a building permit from the City of Fremont.

According to the appellant, there is currently neither an architectural control committee nor a homeowners association, but the CC&Rs provide a mechanism whereby the architectural committee may be established.

The appellant suggests in his notice of appeal that “the wording of the CC&R was a compromise between the builders and the planning commission in 1976 to satisfy the intent of the staff recommendation without being unnecessarily restrictive”. There is no evidence of this. It might have been better if the condition had stated “no additions shall be allowed and the CC&Rs shall contain this restriction”. Language similar to what was actually used has occurred in conditions of approval for other projects, the intent being clearly to prohibit additions. The requirement that the prohibition be included in the CC&Rs was only intended to provide the fullest possible disclosure to prospective owners. In the past, the City did not have a mechanism to verify that the developer actually recorded required CC&Rs. The failure of the developer to comply with the requirement does not invalidate a condition properly imposed by the City Council.

Implications of Granting this Appeal

If it were concluded that the intent of Condition No. 4 was not actually to prohibit additions, staff would defer to Condition No. 1, which established the minimum setbacks for the original development. Condition No. 1 reads

Yard Requirements.

- a. Minimum Lot Size: 3825 square feet
- b. Front Yard Setback: 15 feet. Driveways to have a minimum length of 20 feet.
- c. Side Yard Setback: 0 feet one side, 6 feet total both sides.
- d. Corner Lot Side Yard Setback: The side yard along the street lot line on a corner lot shall have be a minimum of 10 feet.
- e. Side Yard Access: A minimum of 20 percent of the lots to have a 10-foot minimum access to the rear yard.
- f. Rear Yard Setbacks: 12 feet, except in cases where the rear wall of a building is contiguous with the rear property line.

The homes in this development are architecturally unique, being particularly characterized by distinctive roof designs that incorporate cathedral ceilings or lofts but not true second stories. Most of the homes are zero-lot line or patio homes. It appears that a trade-off involved in the approval of this planned development was to allow a reduction in side and rear setbacks and in outdoor open space, based on the unique design of the homes, in exchange for a prohibition on additions, including second stories.

If additions were permitted subject only to the setbacks provided in Condition No. 1, the owners of single-family detached homes in this development could convert them to zero-lot line or patio homes at will. In addition, second stories could be added, even on zero side or rear lot lines, and no site plan and architectural approval or hearing would be required. It would be unusual for the City to allow second stories on patio homes, and very unusual to allow them on a rear lot line, except where the individual homes and the overall development are specifically plotted and designed to accommodate second stories.

In addition, because the conditions of approval do not provide for an architectural control committee and the City does not enforce CC&Rs, the City could not ensure that a committee actually approved additions. It would be very easy for a homeowner to get a building permit and construct an addition without the committee's approval, putting homeowners in the position of having to go to court to seek enforcement of the CC&R after the fact.

Alternatives for the Appellant

Staff has not been adverse to supporting a reasonable modification of Condition No. 4 to allow modest additions under appropriate, limited circumstances. In the case of PLN2000-00180, the proposed rezoning discussed under "Background and Previous Actions" above, staff supported the addition of the following language:

Single-story additions may be allowed in front and side street yards, subject to a zoning administrator permit, for plans with a minimum 5-foot interior side yard setback (non-zero lot line models) located on corner lots. Such additions shall be subject to R-1-6 front and side street yard requirements. The Zoning Administrator shall allow such additions only upon finding that the aesthetic qualities and sense of openness of the district will not be compromised and that the privacy of nearby properties will not be affected.

While this change would not help the appellant, similar wording is possible to allow the appellant's addition to go forward.

Without a change to the original condition of approval (through the mechanism of a rezoning), the City has no way to gauge community support for a proposed addition and no way to address proposed additions consistently and reasonably. Staff has advised the appellant that his addition may become possible if he applies for a change to Condition No. 4.

The appellant has chosen to appeal staff's determination because the cost of doing so is nominal. While filing a rezoning application may be burdensome to the appellant, the absence such an application does not permit staff to develop, analyze or present for approval any kind of scheme for addressing additions.

Environmental Analysis: This appeal is categorically exempt from environmental review under Section 15301(e) of the *CEQA Guidelines*, which relates to existing facilities and minor additions thereto.

Response from Agencies and Organizations: Discussion of the comments in opposition expressed at the rezoning hearing in 2000 appears under "Background and Previous Actions" above. At the time of writing this report, one neighbor has contacted staff and has expressed opposition to granting this appeal.

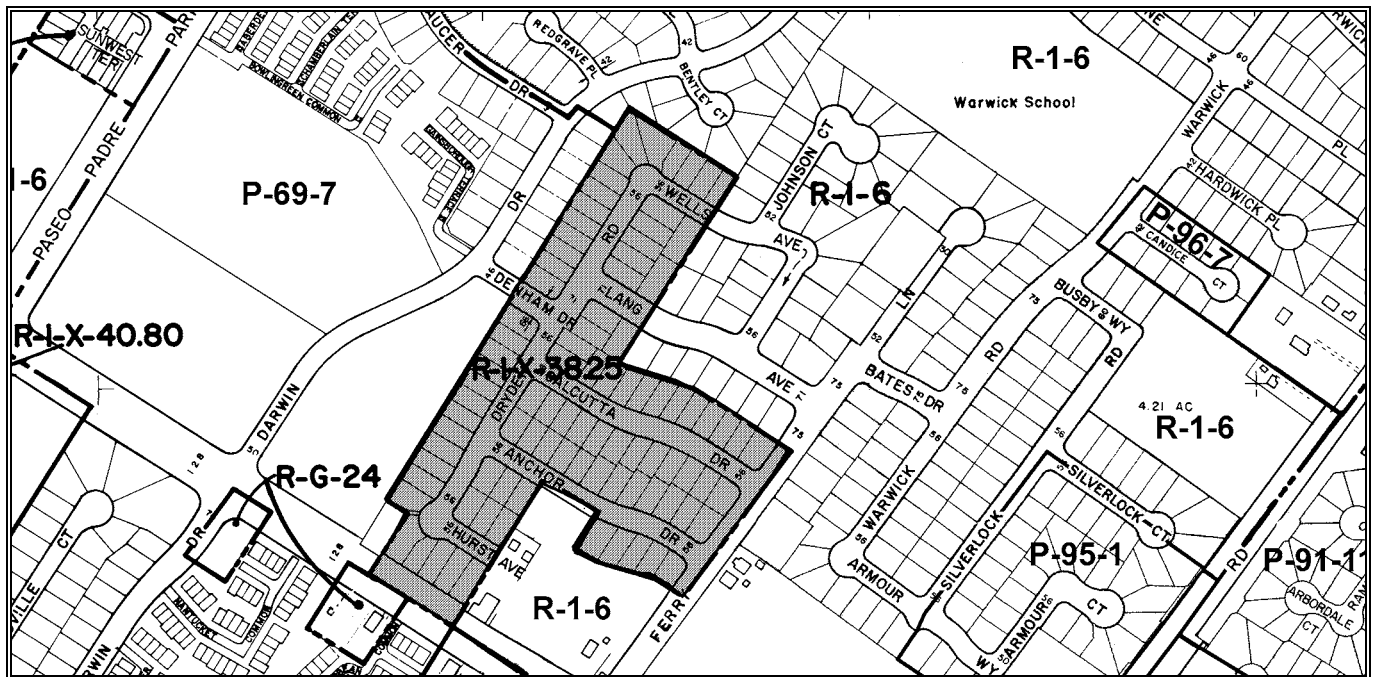
Enclosures: Exhibit "A" (Notice of Appeal)
Protective Covenants [CC&Rs] for Cedar Cove, Tract 3542
Planning Commission Report and Minutes of April 22, 1976 PLN2000-00180
City Council Report and Minutes of May 18, 1976 Z-76-3
City Council Report and Minutes of July 13, 1976 Z-76-3
Planning Commission Report and Minutes of February 24, 2000 Z-76-3

Exhibits: Exhibit "A" (Notice of Appeal)

Recommended Actions:

1. Hold public hearing.
2. Deny appeal.

Existing Zoning
Shaded Area represents the Project Site



Existing General Plan

